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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/158362

PRELIMINARY RECITALS

Pursuant to a petition filed June 14, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on July 23, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the Department of Health Services, Division of Health Care Access and Accountability (DHS) correctly modified the Petitioner's request for personal care worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: OIG by letter

Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

2. On March 5, 2014, TLC Personal Care Agency (TLC) submitted, on behalf of the Petitioner a request for 46 hours / 184 units per week of PCW hours, with an additional 3.5 hours / 14 units per week of travel time for the PCW, at a cost of \$209,880 for 53 weeks of service. (Exhibit 3, pg. 7)
3. On April 3, 2014, DHS sent TLC a letter with a PA error message, requesting information concerning how the Petitioner's cognitive impairment affects his ability to eat, and requesting the most recent notes from Petitioner's doctor's visit. The PA error message also indicated that the physician plan of care did not contain information about medication management. (Exhibit 3, pgs. 19-22)
4. On April 7, 2014, TLC submitted its response along with the Petitioner's medical records. (Exhibit 3, pgs. 23-53)
5. On April 17, 2014, DHS sent TLC another letter with a PA error message, requesting the Petitioner's occupational therapy evaluation and progress notes. (Exhibit 3, pgs. 54-57)
6. TLC submitted the requested information to DHS on May 1, 2014. (Exhibit 3, pgs. 58-65)
7. On June 4, 2014, the Department of Health Services (DHS) sent the Petitioner a notice indicating that his request for services was modified. Specifically, 24.75 hours / 99 units per week of PCW hours were approved, with 3.5 hours / 14 units per week for travel time for the PCW. (Exhibit 3, pgs. 66-69)
8. On June 4, 2014, DHS sent TLC notice of the same. (Exhibit 3, pgs. 70-71)
9. Petitioner has weakness on the right side of his body due to a stroke, but is able to ambulate with a cane. (Exhibit 4, pg. 4 – Medical Note 3/26/14)
10. Petitioner's strength, sensation and coordination on the left side of his body were "grossly intact" as of March 26, 2014. (Exhibit 4, pg. 32)
11. Petitioner has been noted to have memory and speech deficits related to his history of aneurysms and stroke. (Exhibit 4, pg. 27)
12. Petitioner also has a diagnosis of sickle cell anemia. (Exhibit 4, pg. 17)

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and

6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

“In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;
9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Adm. Code. §DHS 101.03(96m)

Petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

TLC, on behalf of Petitioner, requested 46 hours per week of Personal Care Worker (PCW) hours, with additional travel time for the PCW. According to the letter from the Department of Health Services, Office of the Inspector General, DHS approved 24.75 hours per week, with additional travel time for the PCW.

In determining how many hours of personal care services an individual is allowed, a service provider, in this case, TLC, completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website:

<https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165

The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table. This chart can also be found at the aforementioned website.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*.

In general, seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as range of motion exercises, are also examined.

The letter from the Office of the Inspector General, indicated that DHS allotted the maximum time allowable on the Personal Care Activity Time Allocation Table for some activities, but did not allow any time for other activities:

1. Bathing: 30 minutes per day x 7 days	210 minutes per week
2. Dressing: 20 minutes per day x 7 days	140 minutes per week
3. Application of a Splint: 10 minutes per day x 7 days	70 minutes per week
4. Grooming: 15 minutes per episode, 2x per day x 7 days	210 minutes per week
5. Eating: zero time approved	
6. Mobility: zero time approved	
7. Toileting: 10 minutes per episode, 6x per day x 7 days	420 minutes per week
8. Transfers: zero time approved	
9. Range of Motion Exercise: 20 minutes per day x 7 days	140 minutes per week
<hr/>	
Total:	1190 minutes per week

The Petitioner's guardian did not quarrel with the agency's determination to allow the maximum time for the tasks of bathing, dressing – including application of the split, and grooming.

The Petitioner's guardian disagreed with DHS's decision not to allow time for the task of eating. According to its letter, OIG determined the request for assistance with eating to be unsupported by Petitioner's medical records.

The Petitioner's guardian testified that the Petitioner needs assistance with eating, because if allowed to feed himself, he will put too much food in his mouth and choke. However, this behavior was not noted in the Personal Care Screening Tool, nor was this behavior noted in the TLC's response to DHS's PA error message. (See Exhibit 3, pgs. 10-15 and pg. 28) TLC's response indicated that the Petitioner needed assistance with eating, because he had difficulties with swallowing and the Personal Care Screening Tool made the vague assertion that Petitioner needed assistance with eating due to a cognitive impairment. Id.

Petitioner's medical records do not note any difficulties with swallowing or a history of choking, nor is there any documentation showing that the Petitioner hoards food in his mouth. In addition, while Petitioner's medical records indicate that his memory is impaired, it does not indicate any other cognitive impairment that would affect his ability to feed himself. Consequently, it is found that the record does not support the need for PCW assistance with eating.

With regard to mobility, Petitioner's guardian asserts that the Petitioner needs assistance getting around his home, because he is unsteady and will fall. DHS indicated that it did not allow time for mobility, because Petitioner's occupational therapy records indicate that he can walk independently with a quad cane.

The Personal Care Screening Tool indicated that the Petitioner ambulates using a walker and a wheelchair. (Exhibit 3, pg. 12) An April 9, 2014 note from Petitioner's occupational therapist indicates that he does, in fact, walk independently with a quad cane. (Exhibit 3, pg. 63) There is no indication in any of Petitioner's medical records that he is a fall risk. Accordingly, it is found that the record does not support the need for PCW assistance with mobility.

Petitioner's guardian agreed with the time allocation for toileting, 60 minutes per day; 420 minutes per week.

Petitioner did not agree with DHS's decision to deny time for transfers. DHS again indicated that the medical documentation did not support the need for assistance with transfers. Petitioner's occupational therapy evaluation dated April 9, 2014, indicates that the Petitioner is independent with transfers from bed and to a commode. Accordingly, it is found that the record does not support the need for PCW assistance with transfers.

The Petitioner's guardian indicated that she agreed with DHS that time is needed for the medically oriented task of completing range of motion exercises. However, Petitioner's guardian asserted that time should also be allowed for applying lotion and assisting with medication.

With regard to time for applying lotion, the Petitioner's guardian testified that the Petitioner does not have a prescription for the lotion in question. As such, the application of the lotion would not necessarily be considered a medically oriented task. Further, application of lotion is presumed to take place during time allowed for bathing. Please see page 4 of the instructions for the PCST found on-line at:

<http://www.dhs.wisconsin.gov/forms/F1/F11133a.pdf>

With regard to assistance with medications, the Petitioner's guardian indicated that the Petitioner does not understand what medications he needs to take and when. However, Petitioner's medical records do not support a finding that he suffers from any cognitive deficit beyond memory loss. In addition, there is no medical documentation to support the conclusion that he is physically unable to put a pill or liquid in his mouth and drink it down.

Given that the Petitioner does have a documented problem with his memory, he needs a person or device to remind him to take his medications. According to page 11, such a person would need assistance at level B. According to the Personal Care Time Allocation Table, no PCW time is allowed for individuals at level B. This is probably because, as DHS pointed out in its letter, a person who only needs medication reminders is probably able to manage with a pill box or other device. Based upon the foregoing, it is found that DHS correctly denied time for medication assistance.

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming Petitioner. For

an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. The DHCAA allowed for this time which works out as follows:

The actual time needed to complete Petitioner's ADLs and MOTs was 1190 minutes per week. (See above) One fourth of 1190 minutes is 297.50 minutes. So, Petitioner may receive an additional 297.50 minutes per week for incidental tasks.

Totaling all of the time allowable for Petitioner we have:

1190 minutes per week for ALDs
297.5 minutes per week for incidental activities

1487.5 minutes per week ÷ 60 minutes = 24.80 hours per week

1 unit = 1/4 of an hour

24.80 hours x 4 units per hour = 99.2 units per week

DHS approved 99 units per week. As such, DHS correctly modified Petitioner's request for services.

Petitioner should note that if his condition changes, TLC can always request additional PCW time on his behalf.

CONCLUSIONS OF LAW

DHS correctly modified Petitioner's request for PCW time.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

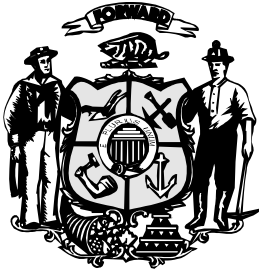
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of August, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 20, 2014.

Division of Health Care Access and Accountability